

# **Exhibit 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

DEMI KOSTKA, et al., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

DICKEY'S BARBECUE  
RESTAURANTS, INC., et al.

Defendants.

No. 3:20-cv-3424-K

Hon. Ed Kinkeade

**Consolidated with:**

Civil Action No. 3:20-cv-3603-K

Civil Action No. 3:21-cv-0137-K

Civil Action No. 3:21-cv-0769-K

**DECLARATION OF BEN BARNOW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Ben Barnow, hereby declare as follows:

1. I am President of Barnow and Associates, P.C. ("Barnow and Associates") and one of counsel for Plaintiffs. I have personal knowledge of the information contained herein and, if called as a witness, could and would testify competently thereto.

2. I am admitted to practice in the states of Illinois and New York. I am among the Court appointed Co-Lead Class Counsel for Plaintiffs and the Settlement Class.

3. My firm conducted a thorough investigation of the facts both before and during the course of the Litigation. We investigated the potential claims against Defendants, interviewed potential plaintiffs, and gathered information about the Data Breach and its potential impact on consumers.

4. The parties engaged in extensive arm's-length negotiations overseen by experienced mediator and former U.S. District Judge Wayne Andersen. In anticipation of the mediation, Defendants provided information to Co-Lead Class Counsel related to the merits of Representative Plaintiffs' claims and class certification. This informal exchange of information,

combined with Co-Lead Class Counsel's individual research, and the significant experience of Co-Lead Class Counsel, allowed counsel to fully evaluate the strengths and weaknesses of Plaintiffs' case, and to conduct informed settlement negotiations.

5. On June 30, 2021, the Parties attended a full-day mediation before Judge Andersen. After a full day of arm's-length negotiations, follow-up communications after the mediation, and with the assistance of Judge Andersen, the Parties agreed to the terms of the Settlement Agreement. The parties thereafter spent significant time negotiating the specific terms and language of the Settlement Agreement through numerous phone calls and email exchanges, and finalized the exhibits to the Settlement Agreement.

6. While confident in the strength of Representative Plaintiffs' claims, I also recognize the risks inherent in litigation of a complex Data Breach case. Drawing on my significant experience in data breach class action litigation, I was able to evaluate the Settlement's adequacy in relation to the probability of success on the merits were this litigation to continue.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16<sup>th</sup> day of May, 2023, in Chicago, Illinois.

  
Ben Barnow